Supreme Court, U.
FILED
MAY 15 1980
MICHAEL RODAK, JR., CLERK

No. 79-1336

In the
Supreme Court of the United States

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, A Corporation,

Petitioner,

vs.

KALO BRICK & TILE COMPANY,

Respondent.

REPLY BRIEF OF PETITIONER, CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

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ARGUMENT

Where The Subject Area That Is The Basis Of A State Law Claim Has Been Preempted By Federal Law, The Fact That The Claim Is For Damages Does Not Alter The Preemptive Effect Of The Federal Law, And State Law Affecting The Subject Is Therefore Inapplicable.

Respondent Kalo Brick & Tile Company ("Kalo") contends at page seven of its Brief In Opposition that since its claim is for damages, the Interstate Commerce Act cannot preempt state law in the subject area of the action. Kalo argues that if federal law preempts state law with regard to the subject matter of the present case, then every rail crossing accident must constitute a prohibited regulation of interstate commerce. This attempted analogy is not only inapposite but actually demonstrates the invalidity of Kalo's overall position.

There are no federal statutes or regulations governing warning apparatus required at crossings or the circumstances under which whistle and bell signals must be given by moving trains. These subjects are therefore proper subjects of state law in rail crossing cases. However, where federal statutes or regulations are directed at the same subject and act on the same object as state law, the state law is preempted by the federal law. *Napier* v. *Atlantic Coast Line Railroad Company,* 272 U.S. 605, 612-613 (1926) (Congressional grant of power to the Interstate Commerce Commission to regulate equipment required on locomotives preempted state power to enact any equipment requirements for locomotives in interstate commerce); *Donelon* v. *New Orleans Terminal Company,* 474 F2d 1108, 1112-1113 (5th Cir. 1973), Cert.

Denied, 414 U.S. 855 (federal law preempts state law in area of railroad roadbed repair and maintenance). Where federal law preempts state law, a state law action for damages is precluded. *Missouri Pacific Railroad Company* v. *Stroud,* 267 U.S. 404, 405, 407-408 (1924) (action for treble damages based on state car service statute not permissible); *Brown* v. *Chicago, Rock Island & Pacific R. Co.,* 108 F.Supp. 164, 166-168 (N.D. Iowa 1952) (in railroad crossing accident damage claim could not be predicated upon state law requirements as to power and brilliancy of headlight because federal law had preempted state law in the area).

The alleged acts or omissions of the Chicago and North Western Transportation Company ("Transportation Company") upon which Kalo bases its claims are that the Transportation Company wrongfully stopped running cars engaged in interstate commerce over a branch line to Kalo's plant site and/or it abandoned a line of railroad and the transportation service it had provided over the line. These subjects have been preempted by federal law. *Missouri Pacific Railroad Company* v. *Stroud,* 267 U.S. 404, 407-408 (1924) (car service); *Powell* v. *United States,* 300 U.S. 276, 287 (1937) (line abandonments and extensions); *Transit Commission* v. *United States,* 289 U.S. 121, 126-129 (1932) (line abandonments and extensions).

In *Transit Commission* v. *United States, supra,* at 126-129, this Court commented upon the historic necessity for preemptive federal legislation governing, and exclusive Interstate Commerce Commission authority over, the subject of railroad line abandonments and extensions:

"These provisions do not specifically mention trackage agreements providing for joint use of railroad lines, tracks or other facilities by two or more carriers. The question is whether the general language of paragraph (18) includes the arrangement under consideration. Prior to the Transportation Act, 1920, regulations coincidentally made by federal and state authorities were frequently conflicting, and often the enforcement of state measures interfered with, burdened and destroyed interstate commerce. Multiple control in respect of matters affecting such transportation had been found detrimental to the public interest as well as to the carriers. Dominant federal action was imperatively called for. Minnesota Rate Cases (Simpson v. Shepard) 230 U.S. 352, 433, 57 L. ed. 1151, 1555, 33 St. Ct. 729, 48 L.R.A. (N.S.) 1151, Ann. Cas. 1916A, 18. And it was everywhere known that enormous sums had been expended by interstate railroad carriers for the construction and operation of lines that were not needed or likely to be needed. Such investments had brought financial ruin to some and had made doubtful the power of many to continue operation in other than flush times. Need for effective regulation in this field had become urgent, and undoubtedly the Congress, by the provisions above referred to, intended to confer upon the Commission plenary power to limit interstate carriers' expenditures for construction or operation to lines of railroad reasonably necessary for the service of the public.

. . . The Act, including paragraph (18) and related provisions, is construed to make federal authority effective to the full extent that it has been exerted and with a view of eliminating the evils that Congress intended to abate. (citations omitted)

. . . On the taking effect of the Transportation Act the state commission was stripped of power to prescribe terms for such operation. The authority of the Interstate Commerce Commission is paramount

and, in respect of the operation and agreement under consideration, it is necessarily exclusive."

State legislatures, agencies, judges, and juries are precluded from governing the conduct of interstate rail carriers in subject areas that have been preempted by federal law. The subject area of the present action has been preempted by the Interstate Commerce Act, 49 U.S.C. §10101, et seq., formerly 49 U.S.C. §1, et seq.

CONCLUSION

For the reasons set forth above and in the Transportation Company's Petition, petitioner respectfully prays that a Writ of Certiorari be granted to review the judgment of the Supreme Court of Iowa and the judgment of the Iowa Court of Appeals.

Respectfully submitted,

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